

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG No. 860

Petition of Vermont Transco, LLC for a certificate of)
public good to operate as a provider of)
telecommunications services in Vermont)

Order entered: 8/23/2007

I. INTRODUCTION

Vermont Transco, LLC ("Transco" or the "Company") requests issuance of a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 231, to provide intrastate telecommunications service in Vermont. In this Order, the Vermont Public Service Board ("Board") concludes that Transco should be issued a CPG as requested to allow the Company to begin operating as a telecommunications carrier within the state.

II. PROCEDURAL HISTORY

On May 25, 2007, Transco, pursuant to 30 V.S.A. § 231 and the rules and regulations of the Board, filed a petition ("Petition"), a Telecommunications Provider Registration Form ("Registration Form") and the required accompanying documentation, seeking a CPG to offer wholesale telecommunications services in the State of Vermont.¹

On June 29, 2007, the Vermont Department of Public Service ("Department") filed a letter with the Board in which it recommended that a CPG be granted without the need for investigation or hearings.

On June 28, 2007, James Dumont, Esq., on behalf of Harley Grice and the Grice owners of land in Middlebury, Vermont, filed a letter with the Board, objecting to the issuance of a CPG in this matter and requesting further investigation and hearings. On June 29, 2007, Peter Langrock, Esq., on behalf of a punitive class in a class action suit brought against Transco, filed a

1. Telecommunications Provider Registration Form at 1.

letter with the Board also objecting to the issuance of a CPG in this matter and requesting further investigation and hearings.

On July 9, 2007, the Department filed a letter with the Board responding to Mr. Dumont's requests and reiterating its recommendation that the CPG be issued without further investigation or hearing.

The Board has reviewed the petition and accompanying documents and agrees that a CPG should be issued without hearing. As a result, newspaper publication is not required prior to issuance of the CPG. 30 V.S.A. §§ 102(a), 231(a).

Based upon the Registration Form and accompanying documents, the Board makes the following findings.

III. FINDINGS

1. Transco has all the necessary authority to transact business in Vermont. Transco is a Vermont limited liability company managed by Vermont Electric Power Company, Inc. ("VELCO"), and owned by its members, which are comprised of all of the Vermont electric distribution companies with the exception of Vermont Marble Company. Petition at 2; Registration Form at exh. CPG-1.

2. Transco is authorized to own and operate an electric transmission system and to provide electric transmission services in Vermont. Petition at 1; *see also* Docket No. 7174, (June 20, 2006).

3. As part of its electric transmission facilities, Transco owns fiber-optic cables that can be used to provide voice and data communication. Petition at 2.

4. Transco proposes to lease excess capacity ("dark fiber") on its fiber-optic cables to retail telecommunications providers on a wholesale basis. The revenues generated from these leases will offset Transco's revenue requirement and reduce the cost of transmission to Transco's transmission customers. Petition at 3.

5. Transco does not provide, or intend to provide, any retail telecommunications services to end-users in Vermont. Petition at 4.

6. Transco is not currently providing telecommunications services in any other state. Registration Form at 2.

7. Transco has provided the necessary documentation regarding management structure and financial information. Registration Form at Exh. CPG-2.
8. Transco has never filed for bankruptcy. Registration Form at 2.
9. VELCO has been the subject of investigations in various Board dockets and other state and federal agencies. Registration Form at 4.
10. VELCO and Transco have not been subject to any fines or penalties. Registration Form at 4.

IV. DISCUSSION

In their respective comments on the Petition, Mssrs. Dumont and Langrock object to the issuance of a CPG in this case without further investigation and hearing. Mr. Dumont argues that because Transco's transmission lines are located in "interstate transmission corridors," the Board's jurisdiction in this matter is unclear. Mr. Langrock argues that Transco's use of dark fiber is related to a class action litigation suit pending before the Addison Superior Court.

The Department argues that the issue before the Board is whether it is "in the public interest to authorize Transco to provide telecommunications services" and not issues regarding individual rights. The Department contends that the issuance of a CPG "does not mean by necessity that Transco will utilize interstate lines." In any case, the Department argues, jurisdictional questions regarding activities that Transco may at some point engage in, are issues that should be addressed in "individual proceedings at a later time."

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g., Docket No. 5012, *Petition of Burlington Telephone Company*, Order of 5/27/86.

The first rationale for entry regulation – "consumer protection" – remains one of the Board's policy objectives. Having reviewed the petition of Transco and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with

minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of Transco's petition nor do they warrant an investigation at this time.

The second – or "franchise protection"– rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition outweighed any flaws, and that competition should be permitted in Vermont's markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.²

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements and Docket No. 5713 investigation and decisions."³ The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance

2. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

3. Vermont Telecommunications Plan (dated December 1996) at iii.

universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.⁴

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may not use that authority to prohibit all competitive entry.⁵ Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

Pursuant to 30 V.S.A. §§ 102 and 231, the Board, in issuing a CPG for a prospective telecommunications provider, must "determine whether the operation of such business will promote the general good of the state." Consistent with state and federal preference for open entry and in order to make this determination, the Board has developed an application form that requires specific information from petitioners that the Board has found to be adequate to grant a CPG. The Board also relies on the recommendations of the Department, as public advocate. In this case, Transco has complied with the requirements of the application process and the Department has recommended that the petition be approved without hearing in accordance with § 231.

Transco has presented sufficient information to show that its provision of telecommunications services will promote the public good. We are not persuaded that the concerns expressed by Mssrs. Dumont and Langrock should force us to vary our long-standing commitment to open entry or conclude that Transco's offering of telecommunications services does not promote the public good. Their concerns are specific to the individual rights of their clients and do not implicate the general good of the state. At this time, there is no indication that Transco's provision of service will have any impact on Mssrs. Dumont's and Langrock's clients. In addition, if such an effect resulting from Transco's eventual operation of its communications facilities arises, it can be dealt with in individual proceedings at that time. Therefore, we see no reason for hearing in this matter.

Pursuant to Board Rule 7.500, non-dominant telecommunications carriers, including Transco, are no longer required to file tariffs with the Board. However, all carriers should familiarize themselves with the consumer protection provisions contained in Board Rule 7.600. In particular, carriers intending to provide operator services should review the rules governing provision of these services in section 7.609(G) of the rules.

4. 47 U.S.C.A. § 253(b).

5. *In the Matter of Classic Telephone, Inc.*, Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

Additionally, the Company should be aware of the Board's policy in connection with the provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the Vermont market that provide debit prepaid calling card services. *See* C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.⁶ Consequently, we ordered World Telecom Group and Quest Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also stated that we would examine the issue of whether this requirement should be instituted on an industry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform the Company that should it decide to include the provision of debit cards among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid calling card services, for the first 12 months of operation. This approach will be fair to the Company, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

6. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. *See, e.g., C.P.G. #156, Petition of IDB WorldCom Services, Inc.*, Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a guideline to certain consumer protection concerns" and are not required by the Public Service Board. *Id.* at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Based on the above findings, discussion and conclusion, the provision of telecommunications services by Vermont Transco, LLC ("Transco") will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG.
2. If Transco at any time in the future proposes to offer operator services, it shall be required to comply with the Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont, and any future orders in that docket.
4. If Transco at any time in the future proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.
5. If Transco intends to do business in the State of Vermont under any name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Board and the Vermont Department of Public Service at least fifteen days before commencing business under the new trade name.⁷

7. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

Dated at Montpelier, Vermont, this 23rd day of August, 2007.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 23, 2007

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.